

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

See instructions on  
reverse)

For use by Secretary of State only

STD. 400 (REV. 01-08)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z- 2008-0724-02	REGULATORY ACTION NUMBER 2009-0129-02 S	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

AGENCY WITH RULEMAKING AUTHORITY  
Delta Protection Commission

AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Amend Appeal Procedure Regulations		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 20004.1, 20009.1, 20009.2	
		AMEND 20000, 20001, 20002, 20003, 20004, 20005, 20008, 20009	
TITLE(S) 14		REPEAL	
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> File & Print <input type="checkbox"/> Print Only			
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Other (Specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs., title 1, §44 and Gov. Code §11347.1) July 24, 2008 through September 25, 2008			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal			
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Linda Fiack, Executive Director		TELEPHONE NUMBER (916) 776-2292	FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) lindadpc@citlink.net

8.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

*Linda Fiack*  
TYPED NAME AND TITLE OF SIGNATORY

Linda Fiack, Executive Director

DATE

1-28-09

# **DELTA PROTECTION COMMISSION'S REGULATIONS CONCERNING APPEALS**

## **Title 14. Natural Resources Division 9. Delta Protection Commission Chapter 1. Commission Hearing Procedures**

### **PROPOSED ADDITIONS ARE IN RED ~~PROPOSED DELETIONS ARE STRICKEN~~**

#### **§ 20000. Purpose**

These regulations establish the procedures by which the Delta Protection Commission processes, considers and resolves appeals from local governmental decisions which are brought before the Commission under the provisions of Public Resources Code §§ 29770-29772. Appeals may be initiated by an aggrieved person ("aggrieved person appeal"), or by the Commission on its own initiative ("appeal initiated by Commission").

#### **§ 20001. Time for Filing Aggrieved Person Appeal**

A person aggrieved by any action taken by a local government which falls within the criteria established in Public Resources Code § 29970(a) may file an appeal with the Commission within 10 ~~calendar~~ working days of the date on which the pertinent local government has taken final action concerning the matter being appealed. For purposes of this ~~section~~ chapter, "final action" means a decision of the local government that is final and not subject to any further review by any member or decision-making body of that local government.

#### **§ 20002. Contents and Filing of Aggrieved Person Appeal**

An appeal brought by an aggrieved person under these regulations shall be in writing and shall contain at least the following information:

- a) the name and address of the appellant;
- b) the name and address of the third party, if any, whose proposal is the subject of the appeal and the local government action being appealed;
- c) a description of the proposal or development that is the subject of the local government action being appealed;
- d) the identity of the local governmental body whose action is being appealed;
- e) the specific ground(s) for appeal; and
- f) a detailed statement of facts on which the appeal is based.

The appeal shall be considered "filed" with the Commission when the original letter from the appellant is received, determined by staff to contain all of the information listed above, and stamped "Filed" by the Commission with the date of filing indicated.

#### **§ 20003. Grounds for Aggrieved Person Appeal**

The grounds for an aggrieved person's appeal of a local government action shall be limited to those specified in Public Resources Code § 29770(a), i.e., that such action, as to lands

located exclusively within the primary zone, is inconsistent with the Commission's Resource Management Plan, those portions of a local government's general plan that implement the Resources Management Plan, or the Delta Protection Act.

#### **§ 20004. Commission Procedures Upon Receipt of Aggrieved Person Appeal**

Within five working days of receipt of an aggrieved person appeal, the executive director of the Commission shall:

- a) post a notice and brief description of the appeal in a conspicuous location in the Commission office;
- b) mail to the affected local government a copy of the same notice and brief description, together with a copy of the appeal document(s) filed with the Commission.
- c) mail to the affected third party, if any, identified in § 20002(b) above a copy of the notice and brief description, together with a copy of the appeal document(s) filed with the Commission; and
- d) mail copies of the notice and brief description to each member of the Commission.

#### **§ 20004.1 Appeal Initiated by Commission**

In the absence of an appeal by an aggrieved person, the Commission may decide by majority vote to review on appeal any action taken by a local government or other local agency in implementing the resource management plan, or otherwise taken pursuant to this division, for land located exclusively within the primary zone, if the Commission believes the action may be inconsistent with the resource management plan, or the Delta Protection Act. Except as provided in § 20009.1(b) and (c), below, the Commission's vote shall take place no later than the first available, regularly-scheduled meeting that occurs at least 25 working days after the date on which the pertinent local government has taken final action concerning the matter. Where the Commission decides to review an action on appeal, the Commission shall proceed to hear the appeal at the Commission's next available, regularly-scheduled meeting.

#### **§ 20005. Effect of Appeal**

Upon either receipt of a timely aggrieved person appeal, or the Commission's vote to initiate an appeal on its own, the executive director shall notify the affected local government and the party whose proposal is the subject of the appeal ~~third party, if any, identified in § 20002(b) above~~ that the operation and effect of the local government's action has been stayed pending Commission action on the appeal as required by Public Resources Code § 29771. ~~Upon receipt of an appeal,~~ Further, the executive director shall request that the affected local agency make available for inspection and copying all relevant documents and materials used by the local government in its consideration of the action being appealed. This information shall include the names and addresses of all persons who submitted written comments or testified before the local government regarding the matter being appealed. If the Commission fails to obtain access to the documents and materials on a timely basis, the Commission shall commence a hearing on the appeal as provided in § 20008 (for an aggrieved person appeal) or § 20009.2 (for an appeal initiated by the Commission), ~~below~~, but shall leave the hearing open until all such relevant documents and materials are received and reviewed by the Commission.

#### **§ 20006. De Novo Review**

The Commission shall conduct a de novo review of the local government action being reviewed.

#### **§ 20007. Standard of Review**

The standard of Commission review of any appealable local government action shall be whether that action meets the requirements of Public Resources Code § 29770(a).

#### **§ 20008. Aggrieved Person Appeal: Hearing on Commission Jurisdiction/Appealable Issue**

a) The Commission's appellate review of an aggrieved person appeal shall be conducted in a hearing composed of two sequential phases, held in accordance with the provisions of Public Resources Code § 29770. At the first available Commission meeting occurring at least 15 working days after the ~~following~~ filing of an appeal, but in no event more than ~~45~~ 60 calendar days ~~thereafter~~ after a filing, the Commission shall conduct an initial hearing and determine by majority vote whether the appeal;

- i) fails to raise an issue ~~raises issues not~~ within the Commission's jurisdiction; or
- ii) does not raise an appealable issue.

b) If the Commission finds either that the appeal fails to raise an issue within ~~raises issues~~ outside the Commission's jurisdiction or that it fails to raise an appealable issue, the Commission shall dismiss the appeal. That dismissal constitutes final Commission action from which judicial review may be taken under Public Resources Code § 29772.

c) The Commission shall make the determination set forth in subsection (a) only after Commission staff has presented a recommendation, orally or in writing, on the questions presented. Staff are strongly encouraged, but not mandated, to make written as opposed to oral recommendations. Any written staff recommendation is a public record which shall be made available for public inspection at least five working days prior to the hearing.

#### **§ 20009. Aggrieved Person Appeal: Hearing on Merits of Appeal**

Unless the Commission dismisses the aggrieved person appeal for the reasons set forth above, the Commission shall proceed to hear the appeal on its merits at the Commission's next available, regularly-scheduled meeting.

##### **§ 20009.1. Withdrawal of Appeal**

a) At any time before the Commission commences the roll call for a final vote on an appeal, the appellant may withdraw the appeal. The withdrawal must be stated on the record at a hearing or filed with the Commission in writing.

b) Where the withdrawal is stated on the record at a hearing, it shall become effective immediately. In such an event, at that same Commission meeting the Commission may decide by majority vote to review on appeal any action related to the withdrawn appeal that the Commission could have reviewed absent that aggrieved party appeal. Where the Commission decides to review an action on appeal, the Commission shall proceed to hear the appeal at the Commission's next available, regularly-scheduled meeting.

c) Where the withdrawal is filed in writing, it shall be effective at, but not before, the Commission's next available, regularly-scheduled meeting occurring at least 15 working days

after the filing. At that meeting, the Commission may decide by majority vote to review on appeal any action related to the withdrawn appeal that the Commission could have reviewed absent that aggrieved party appeal. Where the Commission decides to review an action on appeal, the Commission shall proceed to hear the appeal at the Commission's next available, regularly-scheduled meeting.

**§ 20009.2. Appeal Initiated by Commission: Hearing on Jurisdiction/Appealable Issue If Raised by an Interested Person; Hearing on Merits**

In an appeal initiated by the Commission, any interested person may assert, prior to or at the onset of the hearing, that the appeal:

- i) does not raise an issue within the Commission's jurisdiction; or
- ii) does not raise an appealable issue.

Where a party makes either assertion, the Commission shall hear and resolve the assertion prior to proceeding to the merits of the appeal. In such a case, if the Commission finds either that the appeal fails to raise an issue within the Commission's jurisdiction or that it fails to raise an appealable issue, the Commission shall dismiss the appeal. That dismissal constitutes final Commission action from which judicial review may be taken under Public Resources Code § 29772.

Where no such assertion is made, or where the Commission determines that the appeal raises an appealable issue within its jurisdiction, the Commission shall hear the appeal on the merits.

**§ 20010. Evidence and Hearing Procedures**

a) Hearings conducted by the Commission under these regulations shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unreasonable delay.

b) Hearings need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a court proceeding. Unduly repetitious or irrelevant evidence shall be excluded upon order of the Commission or its chairperson.

c) Evidence before the Commission includes, but is not limited to, the record before the local government whose action is being appealed. Except in unusual circumstances, the record will not include a transcript of the local government proceedings unless provided by a party to the proceedings.

d) Any interested person may testify before the Commission regarding an appeal. Speakers' presentation shall be to the point and shall be as brief as possible. Visual and other materials may be used as appropriate. The Commission may establish reasonable time limits for presentation(s); such time limits shall be made known to all affected persons prior to any hearing. Where speakers use or submit to the Commission visual or other materials, such materials shall become part of the hearing record and shall be identified and maintained as such. Speakers may

substitute reproductions of models or other large materials but shall agree to make the originals available upon request of the executive director.

e) Commissioners may ask questions of the appellant, the affected local government's representative(s), any affected third party(s) appearing at the hearing, staff or the Commission's legal counsel. Questioning of speakers at the hearing by other persons shall not be permitted except by permission of the Chairperson.

f) Interested persons may submit written comments concerning an appeal. Any such comments will be considered by the Commission if they are received by the Commission at or before the hearing on the appeal.

#### **§ 20011. Commission Decision on Merits of Appeal**

a) The Commission's determination on the merits of an appeal brought under Public Resources Code § 29770 shall be by majority vote.

b) The Commission's decision shall be deemed final upon the taking of the vote, unless the Commission directs that written findings be prepared for consideration by the Commission on a subsequent date. If such findings are prepared, the Commission action shall be deemed final upon the date the findings are adopted by the Commission.

c) Written Commission findings, if any, shall be prepared by staff and presented to the Commission for consideration at the next regularly-scheduled meeting following the Commission's vote on the merits of the appeal. The time for preparation of findings may be extended by the Chair in appropriate circumstances.

#### **§ 20012. Notification of Commission Action**

The Commission shall notify the local government, the appellant and the affected third party, if any, identified in § 20002(b) of each formal action taking by the Commission under §§ 20008 and 20009. The notification shall be transmitted by the Executive Director within ten working days of the Commission's formal action.

#### **§ 20013. Ex Parte Contacts**

a) Decisions of the Commission on appeals heard under Public Resources Code § 29770 shall be based strictly on the evidence presented during the public hearing. The Commission shall not rely upon any communications, reports, staff memoranda, or other materials prepared in connection with a particular appeal unless those materials are made a part of the hearing record.

b) If commissioners receive written or oral communications from any person concerning a pending appeal outside the formal hearing process, they shall disclose, on the record and prior to a Commission vote on the appeal, both the existence and substance of the communications.